

Law Offices of Hermit B. Marsh

9550 Warner Avenue
Suite 250
Fountain Valley, CA 92708
Tel: (714) 593-2321
Fax: (714) 593-2399

November 15, 2011

Via United Parcel Service - Overnight Delivery

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E. Street, NW
Washington, DC 20463

Jeff S. Jordan, Esq.
Supervising Attorney
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

Re: MUR.6668

Dear Mr. Herman and Mr. Jordan:

This law office represents Mailing Pros, Inc. (hereinafter, referred to as "MPI"). We are in receipt of Mr. Jordan's correspondence dated November 1, 2012, which was received by MPI on November 6, 2012. The purpose of this letter is to respond to Mr. Jordan's correspondence.

First, MPI is happy to cooperate fully with any investigation by your office. MPI understands the serious nature of the FEC's work and its efforts to enforce the law, and MPI will respond to all requests in a complete and truthful manner, as we would for any law enforcement agency. MPI has earned a positive reputation as an ethical business which provides excellent service to its customers, and it is important to MPI to maintain that reputation.

MPI provides mailing services for a wide range of customers. During election seasons, MPI receives many orders for mailing services for political mail. MPI has been in business since 2000. In the mailing trade, MPI exists as a lettershop, as opposed to a printing or a fulfillment business.

MPI is a union shop (CWA 14904). Because MPI is a union shop, customers may use the union bug on mail pieces provided to MPI if the mail pieces were printed by a union printer.

13044350488

OFFICE OF THE
FEDERAL ELECTION COMMISSION
2012 NOV 15 AM 12:51
RECEIVED

A non-union printer may not place the union bug on a mail piece. Whether to use the union bug is the decision of the customer.

MPI is not a political consultant, and it does not advise its customers regarding elections laws. Nor does MPI determine the content of the mail pieces provided by the customer; that is determined by the customer and its printer. MPI's role is focused on delivery.

A Brief Explanation of MPI's Services

All mailings, whether political or otherwise, are composed of four main cost centers: (1) list acquisition; (2) printing; (3) mail addressing and processing; and, (4) postage and USPS requirements. MPI's work is directed to the third and fourth items on the above list. MPI is first and foremost a mail mechanic. MPI places the addresses on the mail pieces and then prepares the mail for delivery to the Post Office while dealing with USPS requirements. These are MPI's core competencies. MPI does not tell customers what content to put in their mail pieces, and MPI does not market itself as a marketer or political consultant. MPI is simply a mail vendor.

Address Lists

With almost all mail pieces, the customer provides a mailing list. This is in the form of electronic data. Occasionally, the customer arranges for the vendor of the list to send it directly to MPI. MPI does not select mailing lists. Political lists are usually generated by political list companies, who acquire and manipulate data from the Registrar of Voters. MPI believes that the largest number of political lists come from a company named Political Data Inc. (PDI); however, customers usually do not reveal the source of their lists.

Once MPI receives the raw data, usually as an attachment to an email from the customer, the data undergoes an address hygiene procedure, some parts of which are required by the USPS. These include: (1) CASS – to normalize the address information (correct spellings, remove punctuation, append zip code + 4 numbers, etc.), which is required for all presorted mailings; (2) NCOA – an address update, which is usually not required for voter data; (3) Walk Sequence Numbers – used when processing carrier route data, which is used to obtain a significant postage discount from the USPS and is used with most political mailings; (4) Confirm Code – a form of tracking the mail by embedding an additional code into the barcode, which is more frequently used for envelopes but is not generally used with flat mail pieces; and, (5) Duplicate Elimination – this saves money by avoiding duplicates within the mail list. All five of these address hygiene procedures are routine operations.

Printing

Printing is done by a printer. MPI does not offer printing services. MPI does not tell the customer what content to put into its mail pieces; however, MPI will (if the customer is willing) look at the layout of a mail piece to make certain that USPS mail piece design requirements are satisfied. MPI actively encourages its customers to quality control the mail piece design for compliance with USPS rules. The most common issues with USPS rules are address placement, content and placement of the indicia, content and placement of the return address, and shape and

color of the address block. For political mail, placement of the FPPC required disclaimer must also fit. MPI does not offer legal advice regarding the content of the disclaimer, but MPI does advise regarding font size, placement on the mailer, offset colors, etc. Otherwise, the mail pieces may be rejected by the Post Office.

Sometimes, customers arrange to have their printed materials delivered to MPI, and sometimes, customers ask MPI to send a truck or van to pick up the printed materials from the customer or its printer.

For letters, MPI can place the addresses onto either envelopes or letters and then sort the letters into envelopes. However, to do that, the customer must provide pre-printed letters or letterhead, as MPI does not provide letterhead services.

Addressing and Processing

Once MPI has received the mail pieces and the addresses, MPI uses inkjet printers to insert the addresses onto the mail pieces. The data is transferred from the presort software to the inkjet machines. The addressed pieces are placed in presort order according to USPS requirements. If the addressed pieces are not presorted, the USPS will charge a significantly higher postage rate. The addressed pieces are bundled and prepared for delivery to the USPS. Delivery schedules are set by the customer.

Postage and USPS Requirements

MPI is responsible for complying with numerous USPS mail requirements. Beyond the items listed earlier, the customer is not usually involved in the nuts and bolts details on what the USPS requires. If issues arise, MPI informs the customer of the issues and attempts to resolve problems. This rarely occurs.

Postage is usually the largest cost component in any mailing. Consequently, a significant effort is made to utilize all possible postage discounts.

With bulk mailings, postage is generally paid by means of a postal permit. The majority of MPI's customers use MPI's postal permit. If MPI is certain that it will deliver the mail pieces to the Huntington Beach Post Office, it uses one permit marker (#438). If MPI needs to preserve the ability to deliver to either the Santa Ana Post Office or the Huntington Beach Post Office, then the generic permit marker is used (PRSRTD STD, US POSTAGE, PAID, MAILING PROS INC). The permit marker is set forth in a box on the mail pieces.

The USPS billing process used by MPI is known as a CAPS account. The postage is electronically debited from the MPI postage checking account by USPS. Thus, all postage payments for MPI's customers are processed through MPI.

Customer Instructions

If a mailing instruction is not included in an email, a fax, a letter, or some other written form, it may as well not exist. MPI requires its customers to provide written mailing instructions. MPI is not responsible for customer instructions which are not provided in writing.

Payment

Political mail is virtually always COD for all costs. Small items, such as shipping fees for over runs, are added after the fact. Postage is paid COD. Most payments received by MPI are sent via a fax or email of a check and processed electronically through the "Check Composer" service. This is fast, efficient and reliable. MPI almost never receives an original check. MPI maintains a replica of all checks.

As discussed above, MPI does not provide political or campaign advice, does not provide legal advice, does not select mailing lists, does not determine the content of mail pieces (other than those parts required for USPS), and does not extend credit.

Mr. Buettell's Correspondence

I have reviewed Mr. Buettell's correspondence of October 17, 2012, which is attached to Mr. Jordan's correspondence, and I would like to respond briefly to same.

In his correspondence, Mr. Buettell raises concerns regarding possible unlawful activity by Jay Chen for Congress and America Shining. With regard to his arguments regarding those two political activities, Mr. Buettell may be correct. However, although I have the greatest respect for Mr. Buettell as an attorney, I must respectfully disagree with his contentions regarding MPI.

Mr. Buettell represents in his letter that MPI's lettershop service includes "running mailing campaigns." That is not true. MPI will apply addresses to mail, fold the mail or insert it into envelopes (if not an unfolded flat piece), presort the mail, and deliver the mail to the USPS with permits for postage. That is all MPI does. MPI does not "run" mail campaigns. MPI does not determine what to say, how to convey it, or to whom to say it. Those are the responsibilities of candidates, campaigns and political consultants.

Mr. Buettell also incorrectly accuses MPI of "operating in violation of the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission regulations, more specifically, for violation of the prohibition on coordination set forth in 11 CFR, Section 109.21." However, those that distribute mail are not responsible for the content of the mail or the customer's compliance with election laws, nor does the Act make a lettershop a guarantor for its customers' compliance with election laws. MPI is no more in violation of the Act or 11 CFR, Section 109.21 than is the United States Postal Service.

13044350491

13044350492

Mr. Buettell contends that Jay Chen for Congress and America Shining have engaged in unlawful coordination. In this regard, Mr. Buettell may very well be correct. However, the violation by two of MPI's customers does not constitute a violation by MPI. Nothing in the Act, and nothing in Section 109.21, makes MPI a legal advisor, political advisor or guarantor of the conduct of any of its customers. MPI provides lettershop services for hundreds of customers. During election season, MPI provides lettershop services for multiple candidates *who are running against one another*. It is not the responsibility of MPI to determine whether these customers are or are not complying with election laws. MPI's responsibility is limited to addressing the mail, presorting the mail, minimizing the cost of postage, complying with USPS requirements, and delivering the mail to the USPS. That is all.

Whether Jay Chen for Congress or America Shining, or their principals or their political consultant, have engaged in unlawful coordination is an appropriate question for Mr. Buettell and his client to explore. Attempting to blame MPI for such purported violations by those customers is not appropriate.

Preservation of Evidence

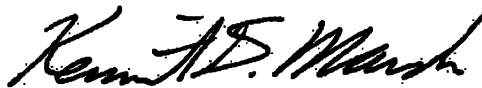
Since receiving the Federal Election Commission's letter on November 6, 2012, MPI has attempted to gather those documents which MPI, from a review of Mr. Buettell's letter, guesses will be of most interest to the FEC. We will provide those documents to the FEC upon receiving its instruction to do so. Our office has also advised MPI (and MPI has instructed its personnel) to preserve any and all documents, including electronic documents, which may have any relation to the matters raised by Mr. Buettell.

Please do not hesitate to contact me at your convenience if MPI may be of any assistance to the FEC in this matter.

With kindest regards,

Very truly yours,

LAW OFFICES OF KERMIT D. MARSH



KERMIT D. MARSH

KDM/jt